

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
REDEVELOPMENT AGENCY SPECIAL MEETING
MINUTES MAY 1, 2002**

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 6:30 p.m.

ROLL CALL ATTENDANCE

Present: Mayor/Chairman Kennedy, Council/Agency Members Carr, Sellers, Tate
Arriving Late: Council Member Chang arrived at 7:09 p.m.

DECLARATION OF POSTING OF AGENDA

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Acting City Attorney/Agency Counsel Siegel announced the following closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: USDC Northern California No. C01-20857 RMW

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Name of Case: Drivers' Placement v. City of Morgan Hill

Case No: CV788941

Court: Santa Clara County Superior Court

Attendees: City Manager, City Attorney, Special Counsel

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:32 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that under Closed Session Item 1, the City Council authorized staff to pursue litigation on one item, and that there was not action taken on the second. Under Closed Session Item 2, this item was held for discussion after the meeting. Closed Session Item 3 had no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Tracy Murphy led the Pledge of Allegiance.

ANNOUNCEMENTS

Recreation Supervisor, Therese Lugger announced the upcoming event of Art a la Carte, which will take place on Saturday, May 11. She explained that this will be a day of hands-on art experiences and exploration for children ages 5 to 11, to be held at P.A. Walsh School from 11:00 a.m. to 3:00 p.m. She stated that this is a great opportunity for dads to bring the children to make a Mother's Day gift. There is a \$2.00 donation requested, which goes toward the support of the program. This year's theme will be Under the Sea, with lots of sea creature projects for the children to work on. She stated that there have been many donations made from businesses and service organizations to support this program, and she listed the names of those who have made donations. She thanked the community for their support of this project, and invited families to come and enjoy the day.

INTRODUCTIONS

Mori Struve, Deputy Director of Public Works, introduced Sheila Webster, Office Assistant II and Herman Pinales, Maintenance Supervisor, the two newest members of the Public Works staff.

CERTIFICATE OF RECOGNITION

Mayor Kennedy, presented Tracy Murphy with a Certificate of Recognition for her exemplary teaching skills which have resulted in her being awarded California Middle Schools Educator of the Year for 2002.

PRESENTATION

Assistant to the City Manager Eulo recognized South Valley Disposal for their work with the City in reaching its recycling goals, through a partnership with local businesses that encourages businesses to take responsibility for their own recycling. Mr. Eulo introduced Julie Osborne, Recycling Coordinator for South Valley Disposal, who would be presenting the Recyclers of the Year awards to recognize the outstanding residential and business recyclers of the year.

Ms. Osborne announced that the Smith family was being honored as the Residential Recycler of the Year and announced that the Business Recycler of the Year was Care Wise Medical Products. She thanked the Council for the opportunity to recognize these outstanding recyclers. She stated that anyone who wishes to nominate an outstanding recycler should call her.

Mr. Eulo added that there is now free recycling available to apartment residents. He also announced that this weekend will be "Recycling Days," which is an opportunity for Morgan Hill residents to bring large items to the dump that doesn't normally get picked up at the curb. Details are listed in the latest City Visions, and this event will be repeated in September.

CITY COUNCIL REPORT

Council Member Tate reported on the following: 1) He participated in a tour of the new Community and Cultural Center construction site. He stated that he is pleased with what the center will provide to the community. He encouraged community members to participate through donation of art for the walls or rose bushes for the rose garden. 2) He attended a Sister Cities committee meeting where he was welcomed by three members of the Library Commission who also serve on the Sister Cities Board. He stated that this is a unique situation, noting that there has been some discussion of including a section in the new library that honors the City's sister cities. He felt that the cultural side of the City is coming together, and that it is heading in the right direction. 3) Announced the Cinco de Mayo celebration scheduled for May 4 at the First Family Baptist Church from 2:00-5:00 p.m. He encouraged citizens to participate.

CITY MANAGER'S REPORT

City Manager Tewes reported that City departments have been responding with more savings than were requested of them, and revenues have been better than anticipated. Because of this, there will be no need to use reserves in the current fiscal year. He stated that it may be necessary to spend a modest amount of the reserves in the next fiscal year, and that the full budget picture will be presented to the Council at the meeting of May 15.

CITY ATTORNEY'S REPORT

Acting City Attorney/Agency Counsel Siegel stated there were no items to report.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to comments for items not appearing on this evening's agenda.

Mayor/Chairman Kennedy announced that there would be a National Day of Prayer Breakfast held on May 2 from 7:00-9:00 a.m. at the Grange Hall, and invited everyone to attend.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Council Member Sellers requested that Item 9 be pulled for discussion.

Mayor Kennedy stated he would like to comment on Items 2 and 3.

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **approved** Items 1-8 as follows:*

1. **BI-ANNUAL VACANCY RATE SURVEY**

Action: ***Established** the Bi-Annual Vacancy Rate for April 2002 as Recommended by the Planning Commission.*

2. **ACCEPTANCE OF FY 2001-02 WORKPLAN UPDATE**

Action: ***Accepted** FY 2001-02 Workplan Update Report.*

Mayor Kennedy stated that he had not found the Aquatic Center in the workplan, and inquired if it was included in the workplan update.

City Manager Tewes responded that this quarterly report lists items that were added to the Capital Improvement Budget, and does not include all of the capital improvement projects.

3. **2001 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY**

Action: ***Informational Only**.*

Mayor Kennedy stated that this report indicates that the City has exceeded all State requirements for water quality, and congratulated the staff of Public Works for the good job of ensuring quality water in Morgan Hill.

City Manager Tewes stated that this water quality information would be provided to all customers after the Council has approved the report.

4. APPROVAL OF SOLE SOURCE PURCHASE OF BICYCLE RACKS

***Action:** 1) Approved Purchase of Bicycle Racks and Lockers from Columbia Cascade Company in Accordance with Section 3.04.120.A (4) of the Municipal Code - Brand Names or Equal Specification and Section 3.04.150.C - Sole Source Purchases; and 2) Approved Purchase Order in the Amount of \$13,850.58 to Columbia Cascade Company for the Purchase of 29 Bicycle Racks and One Bicycle Locker for the Bicycle Parking Facilities Project.*

5. APPROVAL OF SUBDIVISION IMPROVEMENT WITH MORGAN HILL DEVELOPMENT PARTNERS, L.P.-JARVIS DRIVE, APN 726-25-012 & 029

***Action:** 1) Approved Subdivision Improvement Agreement, and 2) Authorized the City Manager to Sign the Agreement on Behalf of the City with Morgan Hill Development Partners, L.P., - Jarvis Drive (APN 726-25-012 & 029).*

6. COMMUNITY PARK - APPROVAL OF PROPOSED GATED PEDESTRIAN ACCESS LOCATED EAST OF THE INTERSECTION OF DENALI AND OLYMPIC DRIVES

***Action:** Directed Staff to Provide a Gated Pedestrian Access to Community Park Located East of the Intersection of Denali and Olympic Drives.*

7. AWARD OF PURCHASE ORDER FOR FINAL RELOCATION OF TEMPLE EMMANUEL CHURCH

***Action:** 1) Determined, in Accordance With Section 3.04.150 A of the City Municipal Code, That the Competitive Bid Process for the Final Relocation of Temple Emmanuel Church Would Not Likely Result in a Lower Price to the City from a Responsible Bidder and/or Would Cause Unnecessary Expense or Delay of the Community Playhouse Project, and 2) Approved Purchase Order in the Amount of \$40,000 with Trost Construction for the Final Relocation of the Temple Emmanuel Church as a Part of the Community Playhouse Project and 3) Authorized a 10% Contingency.*

8. RESOLUTION IN SUPPORT OF FISCAL YEAR 2002/2003 TRANSPORTATION DEVELOPMENT ACT (TDA) ARTICLE 3 GRANT REQUEST

***Action:** Adopted Resolution Regarding Submittal of Request to the Metropolitan Transportation Commission for the Allocation of the 2002/2003 Fiscal Year TDA, Article 3, Pedestrian/Bicycle Project Funding.*

9. APPROVAL OF A CONTRACT CHANGE ORDER FOR NIGHT TIME WORK FOR THE 2001-02 PAVEMENT RESURFACING PROJECT PHASE II - DOWNTOWN MONTEREY

Council Member Sellers thanked staff for taking into account the needs of merchants in scheduling the work to be done during the evening hours. He inquired whether the residents had been notified of the work to be done, and whether work would be scheduled on Friday evenings, which could

negatively impact the restaurants.

Deputy Director of Public Works Struve responded that notification has been made to both residents and merchants. A schedule of the work would be delivered to them this week. He stated that this information has also been published in the newspaper. He reported that there will be no work scheduled on Friday evenings.

Council Member Chang stated that because the project is occurring in front of her office building, she would recuse herself from discussion and voting on this issue.

Council Member Sellers stated that if there is some way to make the pavement in this stretch of roadway feel different in such a way that it might slow traffic, he would like to see that done. If not on this project, than perhaps in the future. Anything the staff can do to “cool down” the traffic would be appreciated.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Approved** a Contract Change Order to C.F. Archibald Paving, Inc. for Performing Night-time Work to Minimize Disruption to Downtown Merchants During Grinding and Paving Operations.*

Council Member Chang returned to the dias.

City Council and Redevelopment Agency Action

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Chang, the City Council/Agency Commission unanimously (5-0) **Approved** Consent Items 10 and 11 as follows:*

10. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR APRIL 17, 2002

Action: ***Approved** the minutes as written.*

11. JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR APRIL 24, 2002

Action: ***Approved** the minutes as written.*

City Council Action

PUBLIC HEARINGS:

12) ZONING AMENDMENT APPLICATION ZA 01-20: TENNANT-SAFEWAY - Ordinance No. 1546, New Series

Planning Manager Rowe presented the staff report, and reviewed the information provided to the Council in the agenda packets. The Planning Commission's recommendations for the amendments to Exhibit A were reviewed, showing a change in the exit clause provision and additional safety improvements to be added to the drive-thru area.

Council Member Carr stated his concern that the exit clause is being changed from one year to two years, as he did not want to see the gas station area sit empty for two years.

Mr. Rowe explained that the applicant objected to the exit clause altogether, and felt that the one year restriction was too restrictive for negotiations. The two-year clause was a compromise to this situation.

Mayor Kennedy opened the public hearing.

Galen Grant, Craig and Grant Architects, stated that he had spent the day going over the 13 items listed in the staff report, and in spite of his concerns about some of them, felt they had worked them out satisfactorily. He said that everything written in the report is acceptable to both Safeway and the Developer, with one exception. He requested that one word be changed on Page 8 related to Miscellaneous Signs, General Requirements. He clarified that the Planning Commission used the word "studied," not "minimized." He stated that the Planning Commission determined that they are in conformance with the sign ordinance, but one of the Commissioners felt that there was one sign too large and that there were too many signs at the fuel station. The Commission approved the project on the basis of the listed changes in the revised report, and that the Design Review would look at the signs and determine what should be changed. He stated that this is the only issue he wished to raise with the Council.

Mr. Rowe stated that the Council has in their packets a copy of the minutes from the Planning Commission meeting of April 6, where it was stated that direction will be provided to the Architectural and Site Review Board (ARB) to study the signs relating to size or reduction in the number of signs.

Mr. Galen stated that he took exception to the use of the word "reduction," since he felt they have been in conformance. He stated that the ARB was directed to study this issue, and not directed to reduce the number of signs.

Council Member Tate recommended that the size and number of signs be studied by the ARB.

Council Member Carr asked why the project is being given a two-year exit clause?

Todd Paradise stated that Safeway wants to make sure that there would not be a closed down facility on the corner for an indefinite amount of time. If they had to find another operator, or sell the property, it could take several years to get through the process. He felt that the exit clause could cause them problems, because real estate transactions can take years to conclude. Safeway wants to have adequate time to re-market the property.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Carr stated that it was previously indicated that Safeway was to be the operator of the fuel station, and that he is not comfortable with someone else coming in to operate the station. If Safeway wants to have the ability to find another operator, there should be strict wording on how it would be operated. He felt that two years was far too long to have the fuel station sit empty while Safeway searched for another operator. He recommended that the exit clause be limited to one year and that a surety bond be in place for the cleanup of the fuel site.

Mr. Rowe stated that a surety bond is included as a condition of approval.

Council Member Sellers stated that he shares Council Member Carr's concern, but realizes that it can sometimes take longer than a year for real estate transaction. He suggested that the exit clause be allowed for one year, but allow the Planning Commission to grant an extension without mention of a time limit, at their discretion. He stated that because there had been three significant fuel stations abandoned for a long period of time, he is sensitive to having the gas station sit empty again.

Council Member Sellers went on to state that he wants to make sure the Planning Commission is not placing undue burdens on this project in the landscaping requirements. He felt it was more important to get this entire center rehabilitated rather than worrying about details of landscaping, such as high berms. He told the applicant that he appreciated their sticking with the project, and he looked forward to having it completed.

Mayor Kennedy felt that the most important issue is the fact that the City has had a shopping center that has been sitting without major anchor tenants for many years. He stated that this was a wonderful opportunity to revitalize the shopping center. He felt that it was important for the City to bend a little to make this happen. He also felt that the conditions outlined address the Council's concern. Therefore, he was comfortable with the two years as recommended by staff.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance No. 1546, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** the Zoning Amendment Ordinance No. 1546, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO AMEND THE PRECISE DEVELOPMENT PLAN FOR THE TENNANT STATION SHOPPING CENTER AND ESTABLISHING DESIGN GUIDELINES FOR THE PUD DISTRICT LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE (APNs 817-06-039, 040 & 41), further amending revised Exhibit A as follows: Section II.G. to read: "...The "Exit Clause" shall include some form of surety to guarantee the removal of the fuel center use if abandoned by Safeway and a new operator is not found within a one year period. The Planning Commission may approve up to two, one-year extensions upon receipt of documentation of a pending agreement with a new operator or other indication of potential sale of reuse; and Section III.E.1.f. amended to read: "The number and size of the signs shall be determined by the*

Architectural and Site Review Board based on a study of the possibility of signs, both in size and number reduction in the project" by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Mayor/Chairman Kennedy indicated that there has been a suggestion to change the order of the agenda to better fit the timing of the various items. He stated that Item 13 would be considered next followed by item 15, 18, 14, 16, 17 and 19-22.

**13) AMENDMENT TO MORGAN HILL MUNICIPAL CODE, CHAPTER 2.68
– LIBRARY COMMISSION - Ordinance No. 1559, New Series**

City Manager Tewes Presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: _____ *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance No. 1559, New Series.*

Action: _____ *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** the Zoning Amendment Ordinance No. 1559, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.68.020 OF THE CITY OF MORGAN HILL MUNICIPAL CODE, REGARDING MEMBERSHIP – TERMS OF OFFICE by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

OTHER BUSINESS

15. REQUEST FROM THE MORGANHILL COMMUNITY HEALTH FOUNDATION (FOUNDATION) FOR THE APPROVAL OF FUNDING FOR TWO PROGRAM INITIATIVES

City Manager Tewes informed the City Council that for the current fiscal year, it had appropriated \$250,000 to support the work of the Morgan Hill Community Health Foundation (Foundation) as they pursued the Council's medical services objectives. The Council provided a condition that the \$250,000 would be made available to the Foundation on a one-for-one matching basis. The request before the City Council is to release some of the funds in light of the \$50,000 matching grant and that the Foundation proposes a program of \$80,000 for physician recruitment that would not initially be matched. He informed the City Council that representatives for the Foundation were present to address the Council.

Bill Brown stated that the Foundation has a strong commitment from two OB-GYN physicians who would like to relocate into the medical office building located on Saint Louise Drive within the next

few months. The Foundation has the support of the Daughters of Charity for this action to take place. He stated that this would be the first of the physician recruitment that the Foundation wishes to undertake to improve the quality and quantity of medical services to be provided in the City. He requested funding in accordance with the instructions given by the City Council over a year ago. The Foundation has received an outright donation of \$50,000 which it is requesting that the Council match. The Foundation is also attempting to put together a physician's recruitment program that will require funding to which there will not be a direct match as it was his belief that the Foundation has already received a match from the Daughters of Charity with the amount of money they are providing to assist in bringing the two physicians to the community. He stated that the Daughters of Charity are providing the physicians certain income guarantees and other benefits but that they must remain within the federal law concerning their support. He felt that there are some things that the Foundation can assist the physicians in obtaining that would make their practice in Morgan Hill beneficial and easier for them to relocate. He noted that one of the physicians is leaving a substantial practice where he has been ranked as the top 100 doctors in the United States and that in coming to California, there will be a tremendous shock to his financial system with housing and costs. He stated that accompanying this doctor would be his wife who is also a OB-GYN. He said that the Foundation is looking forward to their arrival.

Mr. Brown requested that the City Council approve an additional \$80,000 on one of two theories in that this is a matching grant as the Daughters of Charity have spent this much and guaranteed more to help and assist bringing the two physicians to the City of Morgan Hill. He reassured the City Council that the Foundation would not stop looking for additional grants. He stated that it is difficult to get individuals to commit monies based on plans. However, when the Foundation can show that physicians are moving in and services are being rendered, he felt that it would be easier to obtain these grants.

Council Member Tate stated that he did not object to providing the matching grant and carrying over the funds into next fiscal year. However, he wanted the Foundation to focus on the match. He said that it was the Council's desire to have the Foundation obtain matching funds for the \$250,000. He requested Foundation commitment that it would continue to seek matching funds.

Mr. Brown stated that the Foundation would not rest on seeking matching grants and that it would go out and seek funding. He said that it is extremely difficult to obtain funding for planning as success has to be demonstrated.

No other comments were offered.

Action: *Council Member Chang made a motion, seconded by Council Member Sellers, to **Approve** the Request from the Morgan Hill Community Health Foundation for the Approval of Funding for Two Program Initiatives: 1) A \$50,000 matching grant of that being provided by the Health Trust and 2) the \$80,000 be used for the Physician Recruitment Program; and 3) that the remaining balance of the \$250,000 be carried over to the next fiscal year.*

Mayor Pro Tempore Carr felt that Foundation has come forward with great suggestions. He stated that he did not have a problem with the \$50,000 match as it is in line with the policy set forth by the

City Council over a year ago. He also did not have a problem with carrying over the dollars beyond the time line established and keeping the dollars in tack as matching dollars. However, he did have a concern with the \$80,000. He did not believe that the Daughters of Charity dollars are within the spirit of what the Council had in mind when it set aside \$250,000 as matching dollars. He expressed concern that he has not yet seen a lot of progress in the area of raising funds from the Foundation. He understood that a lot of planning and a needs assessment are taking place. He also understood that there has to be some degree of success demonstrated in order to build greater successes. He stated that he did not want to slow the progress down and therefore he would not oppose the motion. However, should the Council approve the motion, he recommended that the Council request that the Foundation catch up in its matching fund efforts. He recommended a 2 for 1 match in dollars so that the Foundation catches up to the dollars that the Council has put toward this effort.

Council Member Sellers felt that the funds are in fact matching funds. He also felt that there is a direct correlation between the actions of the Daughters of Charity and their investment, in terms of dollars, into the community and the actions of the Foundation. He concurred that it is not as clear or black and white as that of the other \$50,000 grant. He felt that the charge of the Foundation was to go forward and generate funds for health care services through the community. He was comfortable that the Foundation has done so in this case. He did not want to tie the Council's hands regarding future allocations. He would like to have the Foundation understand the Council's desire and not require the Foundation to come back with a 2 for 1 match as he would hate to see the Council go through a convoluted process to get to where the City wants to be. He would agree to incorporate Mayor Pro Tempore Carr's comments as a suggestion, but not to make it a requirement.

Council Member Tate stated that he was comfortable with the comments as stated by Mr. Brown that the Foundation would make every effort of going after matching dollars as a public commitment. He felt that Mayor Pro Tempore Carr's expectations were correct but that the Council is changing the expectation by granting the \$80,000 and considering the Daughters of Charity's matching funds. He stated that he was comfortable in moving forward with the motion as presented and the commitments as stated.

Council Member Chang noted that in order to recruit two physicians, the Daughters of Charity's program is an income guarantee. She is aware of other doctors being lured into Gilroy with an income guarantee of \$150,000 per doctor. She noted that it would be an income guarantee of \$300,000 for two physicians. She stated that the Council does not know the end results but that she considers this to be a match on the Daughters of Charity behalf. She recommended that the Foundation identify the number at a later date or raise additional funds.

Mayor Kennedy felt that the Foundation has been working long and hard toward a successful arrangement with the Daughters of Charity. This joint effort with the Daughters of Charity represents the reopening of the medical office building adjacent to the St. Louise Hospital building. He stated that he is pleased that the City is at this point.

Vote: *Motion carried unanimously (5-0).*

City Council and Redevelopment Agency Action

OTHER BUSINESS

18) COMMUNITY PLAYHOUSE PROJECT CONSTRUCTION

Director of Public Works Ashcraft presented the staff report. He indicated that staff offers a third possible action to the two listed in the staff report. Should the Council/Agency Commission find the \$600,000 increase to the budget from the Agency project contingency funds to be a substantial increase that it award the bid, have construction commence, but allow the Council greater opportunity to review the process under construction to make sure that if there are higher change order, that they come to the Council/Agency's attention earlier rather than later. This would allow for a construction contingency of \$95,000. This would assume that staff has identified, with Kent's Constructions help, the fact that there is approximately \$50,000 in value engineering deductive change orders which may result in lowering the cost of the building without compromising the quality of the building or the ability of the building to serve its intended purpose. Staff would report, on a monthly basis, the construction activity and advise the Council/Agency if it has issued any positive change orders. This alternative recommendation would be a way to award the bid and not delay the completion date of the project. He indicated that Joyce Maskell, project manager, and Glenn Ridder, construction manager, were present to answer questions.

Council/Agency Member Tate noted that staff was recommending the approval of approximately \$250,000 in contingency funds without involving the Council too much or a \$95,000 contingency with Council involvement. He inquired if there was a way to increase the contingency to a number between \$95,000 and \$250,000 such as \$150,000, and authorize the additional \$450,000 to the project so that it does not require frequent Council review.

Mr. Ashcraft stated that a \$250,000 contingency would not require staff to return to the City Council with major change orders unless deemed necessary. At a \$95,000 contingency, staff would need to return to the Council at least once or twice for additional funds. With \$150,000 contingency, there would be a greater chance that staff would not need to return to the City Council and would give staff flexibility.

Glen Ritter stated that staff has discussed the potential of value engineering with Larry Kent, Kent Construction. He said that both the City and Mr. Kent are confident that \$50,000 would be a comfortable number to attribute for value engineering.

Council/Agency Member Chang referred to page 175 of the agenda packet and requested clarification of the bid number of \$2,312,213 million. She noted that the project cost estimate was \$1.6 million and that the City received a bid at \$2.2 million. She inquired if staff spoke with the architect to explain the difference in the estimated cost and the low bid.

Mr. Ritter responded that the difference in the cost estimate and the bids submitted were discussed with the architect. He said that there was a slight difference in opinion as to why the estimate was lower than the bid. He stated that several issues could affect bids such as the risk involved with the

project. It was the architect's belief that additional bidders were needed to get a lower cost. It was staff's belief that the bid submitted by Mr. Kent is the actual cost for the project. He stated that in his discussions with other contractors who were on the plan holders list, they indicated that this was the approximate bid number they would have submitted should they have bid the project. It was his belief that the City architect's estimates were substantially low.

Council/Agency Member Chang inquired as to the gross profit margin being used by the City's architect.

Mr. Ritter stated that the profit margin for the estimate on the general contractor is 20% (10% overhead/10% for profit). He said that 15-18% profit is typical for a project of this size. He indicated that staff does not typically request breakdown of costs as part of the bid process.

Mayor/Chairman Kennedy recommended that cost breakdowns be required with future projects as it would make it easier to figure out where the differences are in the estimates.

Steve Nielsen, construction manager from Consolidated CM, stated that it was his belief that the bid climate would not have changed if the project bid the previous month or the following months. He said that this project involves four complicated aspects: renovation, movement of a building, new construction, and all factors coming together at one time. He indicated that the architect used a professional cost estimator to prepare the project estimate. He stated that cost estimators go by a book and apply factors to it. When it goes out to public bid, the bids change quite a bit.

Mayor/Chairman Kennedy stated that it was his belief that the cost estimator had some experience with retrofitting existing building costs.

Mr. Nielsen stated that when you talk about retrofit and certain amount of environmental hazards, and historic preservation, to a certain extent, these factors make this a unique project and that there are few projects like this in the \$2 million range. He said that the City is entitled to a detailed report on how much everything costs and that these costs would go into the escrow documents after the bid is awarded. He stated that cost comparisons can be made at this point. He said that it would be difficult to suggest where the discrepancies are between the city architect's cost estimates and the reality of the bid. He said that it was his belief that the contractor would agree to provide a cost breakdown in advance of awarding the bid. He said that he could not tell the Council that there is a chance that there would be potential gains if rebid but that there would be potential risks.

Mayor/Chairman Kennedy stated that the question before the City Council is whether the project should be rebid or go with the bid at hand.

Council/Agency Member Chang noted that the estimate was \$1.6 million with a 10% contingency and 10% overhead. She felt that the number is even lower because the City is proposing a \$95,000 contingency.

Mr. Ritter clarified that the \$95,000 is a construction contingency separate and different from an overhead and profit for this contractor.

City Manager/Executive Director Tewes clarified that the \$1.6 million estimate from the architect includes the architect's estimate of the actual construction cost plus 10% for profit and 10% overhead. He said that the City holds the contingency as part of the construction project. He indicated that the City is required to bid projects under the state statutes and that bidders have the right to have their bids evaluated on a lump sum basis. The City has the right to reject or award bids. However, the City is not able to pull projects apart, indicating which profits it likes as the state statute is written to avoid this.

Mayor/Chairman Kennedy stated that he would like to review detail break downs of subcontractors' cost and the cost of materials.

City Manager/Executive Director Tewes said that cost estimates can be required to be broken down in the future.

Mayor/Chairman Kennedy opened this item to public comment.

Peter Mandel, South Valley Theater Group, stated that this project was started a long time ago, noting that there was a built in risk in that it was decided to rehabilitate this building. Doing so implied a lot of unknown risks. He said that only now has the market quantified the risk to the city. If the project is rebid, it is unknown what costs would be submitted, noting that none of the rehabilitation risks have changed. If the plans are redrawn, other new risks would be introduced into the project in terms of the building sitting empty on blocks for an extended period of time and may result in a new economic model and building in the rainy seasons. He said that the Theater group is not in a position to tell the Council where to find the money or how to allocate monetary priorities. He felt that it was prudent as the City moves forward, not to increase risks but to lower risks. He felt that this building would be an asset to the community and requested that the Council award the bid in order to get a handle of the risk to be faced.

Mayor/Chairman Kennedy asked if the Theater group organization would be willing to undertake fundraising efforts as this would be the organization's primary facility to be used?

Mr. Mandel responded that the Theater group would be willing to conduct fundraising efforts such as purchasing the rights to place names on theater chairs. The Theater group would also be willing to consider other funding opportunities. He stated that he could not commit a funding level for the group being requested by Mayor Kennedy at a tune of \$50,000-\$100,000.

No other comments were offered.

Council/Agency Member Tate stated that he was thrilled with what was taking place at the intersection of Monterey and Dunne Avenue. He was not sure how a delay would change the bid results. He said that Kent Construction is known for their outstanding work in the city. He has heard a lot of things this evening that suggest that the City would not achieve a difference in bids from others if the project was to be rebid. He was appreciative of staff's suggestion to address reducing costs. He recommended that the Council proceed with the bid and allocate \$150,000 contingency at an increase of \$450,000 for the project. Staff to value engineer \$50,000, if possible, in order to complete the project.

Council/Agency Member Carr felt that the Council should move forward with the bid and the project. He noted the spread between the two bids submitted. If the City rebids the project, the chances may be that the City already has the high and low bid. The City may end up with a bid in between and did not believe that it was worth rebidding. He was pleased to see a local contractor be the low bidder. He said that the Council was trying to find ways to invest its dollars with local contractors. He said that he would hate to see the project delayed and have the theater wrapped during the holiday season while the Community Center is opened. He stated that the Council went through an involved process of allocating RDA funds, noting that the Council set aside some unallocated dollars for problems such as this as they occur. He stated that he would like to see the Council move forward with awarding the bid for the project this evening, noting that staff has come up with great suggestions. He would support increasing the project cost by \$450,000 versus \$600,000. He challenged staff to figure out what happened with this bid to make sure that bids are closer in the future because the unallocated RDA funds are quickly disappearing.

Mayor/Chairman Kennedy stated that he has felt all along that this was a wonderful project and has supported it. However, \$600,000 is a lot of money that can be used for other worthwhile projects such as the historical buildings in the downtown or other projects that are important to the community. He did not believe that this project was a part of the visioning process but a new project that was not a part of the original plan. He did not believe that rebidding would lower the bid. However, he would like to see a commitment from the Theater group to help raise funds for the playhouse as the facility would be a benefit to the community and to them.

Council/Agency Member Chang stated that she spent time with a contractor who has conducted renovations in the past regarding the bidding process. The contractor advised that he attended seminars on renovations of old historical sites. She did not believe that rebidding the project would make a difference and recommended that the Council move forward with awarding the bid. However, she did not know where the funding would come from. She noted that the City has \$147 million in projects. If the earmarked funds do not remain constant, it would impact other projects.

Richard Kaiser, president of South Valley Theater, stated that the group has been planning fundraisers all along, including assistance with the construction phase of the building. He said that he has to meet with the Theater group to see what it can do, indicating that they have a lot on their plate at this time. He stated that he would be happy to sit down with the Council to see how they can help make the project work. It was understood from the beginning that this project would not be a money making project. He felt that the project and the Theater group would be benefitting the City as community members can perform while community members watch.

Council/Agency Member Carr expressed concern that the Council is requesting a community member at the podium to raise significant dollars for a project that the City Council is building. He was not sure if the suggestion of fundraising activities was in the scope of Council discussion this evening. If the Mayor is suggesting a delay in making a decision on the bid so that South Valley Civic Theater can have discussions and staff can discuss with them about their possible involvement of the project, this could be a suggestion that can be made. However, he would not support this suggestion.

Council/Agency Member Chang stated that she has been advised that the \$2.2 million bid is the right

number. Should the City decide to award the bid, the Council could encourage South Valley to assist in fundraising activities. However, she felt that the bulk of the financial responsibility is that of the City. She said that she was not comfortable taking the increase for the project from the unallocated RDA reserve. She inquired if there were any other funding sources to assist with this project?

City Manager/Executive Director Tewes said that there were two possible funding sources: Park Maintenance Trust Fund and General Fund reserves.

Council/Agency Member Carr inquired whether the Council/Agency Commission could award the bid this evening and request that staff return with funding alternatives for the additional dollars, using both the unallocated RDA, Park Funds or other suggestions?

City Manager/Executive Director Tewes responded that it would be appropriate to identify where the funds would come from. The Council could award the bid tonight, establish the appropriate level of contingency, appropriate additional funds from the RDA unallocated balance and then direct staff to try and identify other funding sources that might relieve this balance in the future.

Council/Agency Member Sellers inquired if staff was comfortable with an increase to the project of \$450,000, subtracting \$50,000 from the contingency reserve for value engineering?

City Manager/Executive Director Tewes said that Mr. Ritter has indicated a high degree of confidence that staff could identify value engineering items at a \$50,000 level.

Council/Agency Member Sellers said that he was comfortable with this funding level. He recommended that the Council/Agency Commission look at other line items within the RDA allocations as he did not know if Parks Funds or General Fund revenues should be used at this time. He felt that the City can look at economic development funds as this would be an economic development project. He stated that he was not anxious about asking a struggling community group to try to undertake fundraising efforts. If anyone should undertake fundraising efforts to pay the balance of the project, it should be the City. He stated his appreciation that the Theater group would undertake the fundraising efforts for plaques as the health of the organization would be vital to the health of the entire facility. He suggested consideration of using economic development or unallocated administrative funds.

Action: *Council/Agency Member Sellers made a motion, seconded by Council/Agency Member Tate to **Appropriate** an additional \$450,000, increasing the contingency amount to \$150,000 from the Redevelopment Agency's Unappropriated Fund Balance; 2) **Approved** Plans & Specifications and Adopt Project Budget; 3) **Awarded** the Contract to Kent Construction, Inc. in the Amount of \$2,212,213; and **Directed** staff to attempt to get \$50,000 in deductive value engineering change orders.*

Council/Agency Member Chang stated that awarding the bid to a local builder would result in the use of local laborers who would purchase local materials, resulting in the generation of additional income for the City. She felt that the playhouse would be used by other groups and not just the Theater group. Therefore, she did not believe that the Theater group should be made responsible for all fundraising efforts. She stated that she would like to see half of the funding come from the park

funds instead of the RDA funds based on budget constraints.

Council/Agency Member Tate stated that he felt that the playhouse was part of the Visioning process as a large theater was a component of the community center, noting that it would not fit, thus the playhouse concept. He felt that this was part of the visioning he always had in mind.

Mayor/Chairman Kennedy stated that there would be other projects vying for the limited resources available. It was his belief that projects would work better when the public is actively involved in the process, thus the reason for his encouragement of the Theater group to be a part of the fundraising process. He requested that the Theater group consider fundraising efforts.

Vote: *The motion carried unanimously (5-0).*

City Council Action

14) APPROVAL OF WATER, SEWER AND STORM WATER MASTER PLANS (Continued from April 3, 2002 Meeting)

Director of Public Works Ashcraft presented the staff report. He indicated that Tony Akell, Kroll Engineers, was present to answer questions relating to the master plans. He indicated that short term improvements are contained within the new five-year Capital Improvement Program. He said that these improvements are planned for 2004-2005 because these cannot be designed fast enough to get them bid sooner. He felt that staff provided a conservative estimate when these improvements would be needed.

Mayor Kennedy inquired if there were any glaring deficiency that were noted in the three systems.

Tony Akell stated that there were no glaring deficiencies and that enhancements to the system have been identified in all three utilities and associated costs. He said that staff has been aggressive in identifying projects under the storm drain side which have been effective as the hydraulic/computer modeling have discovered.

Mayor Pro Tempore Carr felt that staff has provided the Council road maps and asked where the City goes from here.

Mr. Ashcraft responded that the staff provided the Council with planned expenditures in a rough estimate of when they need to be spent. Staff would return to the City Council with additional details on how the improvements are to be funded such as impact fees. It is staff's belief that water, sewer and storm drain impact fees need to be increased to match the level of expenditure in order to have capacity for new users. Staff would also return with a comprehensive review of water and sewer rates. Staff plans to return with both of these prior to the review of next year's budget. He said that staff would need to identify funding sources before recommending City Council adoption of the five-year CIP.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Chang, the City Council unanimously (5-0) **Approved** the updated Water, Sewer and Storm Water Master Plans.*

16) ALL AMERICA CITY APPLICATION

Assistant to the City Manager Eulo presented the staff report. He indicated that the immediate funding needs would be to travel to Kansas City. Should the Council direct staff to proceed with the All American City application, staff would need to include in the budget the funds needed for the effort in next year's budget, noting that the application is due in the spring of 2003 with the competition being held in June. He said that \$90,000 is the estimated cost to submit an application but that it would need to be augmented should the City be selected as a finalist to pay for the delegation to travel to the competition.

Mayor Kennedy stated that he requested that this issue be brought before the City Council as there are many projects going on in Morgan Hill. He felt that the City has the ingredients of what it takes to be an All America City. He recognizes that the City has a lot of things on its plate and the question is whether or not the City has the resources and the will to submit an application. He felt that it was important to discuss the application.

Council Member Sellers inquired as to the process that would take place in sending a delegation to Kansas City in June 2002.

City Manager Tewes responded that the delegation would attend a workshop and watch the presentations of the communities that have been selected as finalists.

Council Member Tate stated that he has been involved in corporate applications in the past. He understands that full time staff needs to be assigned to work on the applications. He said that these individuals take other individuals time in order to submit an application. He did not believe that it was fair to characterize this as just hiring two individuals to carry the application forward because these individuals would be spending time with staff assigned to the work plan that the City Council approved.

City Manager Tewes noted that the individual assigned to work on this application will be working with existing city staff. However, he stated that most of the application is not what city government does but what the community does. Therefore, the individual would be talking to community groups, businesses, non profit groups, etc.

Council Member Sellers stated that he supported allocating \$3,500 at this time to send a delegate to determine if this is a program the City would like to participate in and when an application should be submitted. He felt that the city's application would continue to get stronger as some of the projects come on line and the City was able to show how they were built and implemented.

Council Member Tate felt that sending a delegation to Kansas for this forum may result in the delegation returning with ideas that would be useful to the city outside of any application being submitted. He supported funding \$3,500 if there is to be a benefit in sending a City delegation to

Kansas.

Council Member Sellers felt that it would be appropriate to send a staff member and the Mayor as the City's delegation

Mayor Kennedy felt that it would be appropriate to send the City Manager and indicated that he would be interested in starting the process.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) agreed to **allocate** \$3,500 from the contingency fund to send City Manager Tewes and Mayor Kennedy to Kansas City and report back their findings.*

17. **REQUEST FROM SANTA CLARA COUNTY FOR CITY SPONSORSHIP OF THE “UNITY IN DIVERSITY DAY” CELEBRATION**

Mayor Kennedy stated that he has received a letter from the County regarding the Unity in Diversity Day. He indicated that the County has a program where the sponsors pay for different levels of booths. He felt that the concept was good but the question is whether the Council wishes to spend resources to participate in this celebration.

Council Member Tate stated that he would agree to fund the celebration at a minimum level based on the City's current budget situation.

Mayor Pro Tempore Carr noted that maximum sponsor funding is \$500.

Council Member Chang stated her supported of the wording "Unity In Diversity" as some individuals are occasionally placed in a “diversity box.”

Action: *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Allocate** funding at a \$500 level for the “University In Diversity Day” celebration.*

City Council Action

19) **ADOPTED ORDINANCE NO. 1549, NEW SERIES**

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Tate, the City Council **Adopted** Ordinance No. 1549, New Series as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 4 -LOT COMMERCIAL PROJECT ON A 6.22-ACRE SITE LOCATED AT THE INTERSECTION OF COCHRANE ROAD AND MONTEREY ROAD, EAST OF THE UNION PACIFIC RAILROAD TRACKS. (APN 764-10-004) by the following roll call vote: AYES: Carr, Chang, Kennedy, Tate; NOES: Sellers; ABSTAIN: None; ABSENT: None.*

20) ADOPT ORDINANCE NO. 1556, NEW SERIES

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1556, New Series as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL RE-ZONING 1.95 ACRES, FRONTING ONTO MAST AVENUE FROM SERVICE COMMERCIAL TO GENERAL INDUSTRIAL. (APN 817-02-050) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21) ADOPT ORDINANCE NO. 1557, NEW SERIES

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1557, New Series as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE 576, NEW SERIES, TO ALLOW AN INCREASE IN THE NUMBER OF OCCUPANTS OF THE SENIOR CARE FACILITY LOCATED AT 17090 PEAK AVENUE FROM 15 TO 28 BEDS by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

22) ADOPT ORDINANCE NO. 1558, NEW SERIES

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1557, New Series as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 14 ACRES, LOCATED ON THE WEST SIDE OF PEET ROAD - BETWEEN COCHRANE ROAD AND HALF ROAD FROM COUNTY A-20S TO CITY R-1-12,000 (APN 728-34-002), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURN TO CLOSED SESSION

Acting City Attorney/Agency Counsel Siegel announced that the City Council/Agency Commission would convene to closed session to discuss closed session item No. 2 as listed above.

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

Mayor/Chairman Kennedy adjourned the meeting to closed session at 10:04 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 10:47 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that no reportable action was taken on closed session item 2.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:48 p.m.

MINUTES RECORDED AND PREPARED BY

MOIRA MALONE, Office Assistant II

IRMA TORREZ, City Clerk